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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

ERICA BLUTH, an individual, and  
LAVORIA WILSON, an individual,

Plaintiff,

vs.

TYLER BAEHR, and individual, and THE  
CITY OF RENO, a political subdivision of  
the State of Nevada,

Defendants.

**CASE NO.: 3:25-cv-00129-ART-CSD**

**CITY OF RENO'S REPLY IN SUPPORT  
OF ITS MOTION FOR JUDGMENT ON  
THE PLEADINGS**

Defendant City of Reno ("the City"), by and through its attorneys, Reno City Attorney Karl S. Hall and Deputy City Attorney Peter Keegan, hereby file the instant Reply In Support of Its Motion for Judgment on the Pleadings (ECF No. 16).

**I. Legal Argument**

**A. The City is Entitled to Judgment on the Pleadings Because Plaintiffs' Complaint Fails to State Plausible State Law Claims Against the City.**

The Plaintiffs' argument that the City's Answer (ECF No. 6 at 2-3 ¶¶ 4, 12) denying that the Baehr's actions were within the scope of this employment somehow creates a factual dispute

is a logical fallacy.<sup>1</sup> The identified denials in the City’s Answer dovetail perfectly with the facts as pleaded by Plaintiffs’ Complaint and together demonstrate no factual dispute exists as to whether Baehr was acting outside the scope of his employment.<sup>2</sup> Plaintiffs’ Complaint repeatedly alleges, using a variety of verbiage, that Baehr used “his position of authority to obtain personal information for non-law enforcement purposes.”<sup>3</sup> Just because Plaintiffs’ Complaint pastes in the legal conclusion that “Baehr was acting within the scope of his employment with the City of Reno at the time of the incidents complained of herein” does not create plausible claims for Respondent Superior liability.<sup>4</sup> Defendant Plaintiffs cannot rely on threadbare legal conclusions when their Complaint pleads specific countervailing facts.<sup>5</sup> Even construing the Complaint’s alleged facts in the light most favorable to the Plaintiffs unequivocally demonstrates the City is legally entitled to immunity pursuant to NRS 41.745 and therefore judgment as a matter of law on Plaintiffs’ State law claims.<sup>6</sup>

**B. The City is Entitled to Immunity Because As Plaintiffs Allege, Baehr’s Traffic Stops Were Part of an Unforeseeable Pretextual Scheme to Pursue his Independent Venture, And Not In Furtherance of Any Legitimate Law Enforcement Purpose.**

**1. As Alleged, Baehr’s Conduct Was An Independent Venture.**

Plaintiffs’ Opposition conveniently ignores the pleaded fact that Baehr did not issue a ticket

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<sup>1</sup> The Plaintiffs’ citation to *Komton v. Conrad Inc.*, 119 Nev. 123, 125, 67 P.3d 316, 317 (2003) in their Opposition (ECF No. 31 at 8:20-22) is inapposite. First, the Court in *Conrad* affirmed the district court’s finding that Conrad was not vicariously liable because he was not performing a service within the scope of his employment for his employer at the time of the accident. And second, the Court’s holding in *Conrad* had nothing to do with the content of the defendant’s answer.)

<sup>2</sup> Compare (ECF No. 6 at 2 ¶¶ 3-4) with (ECF No. 1 at ¶¶ 23, 30, 31, 33, 45, 48); see *Morgan v. Cnty. of Yolo*, 436 F. Supp. 2d 1152, 1154–55 (E.D. Cal. 2006), *aff’d*, 277 F. App’x 734 (9th Cir. 2008) (citing *Irish Lesbian and Gay Org. v. Giuliani*, 143 F.3d 638, 644 (2nd Cir.1998) (“A Rule 12(c) motion challenges the legal sufficiency of the opposing party’s pleadings and operates in much the same manner as a motion to dismiss under Rule 12(b)(6).)).

<sup>3</sup> Complaint (ECF No. 1 at ¶¶ 23, 30, 31, 33, 45, 48)

<sup>4</sup> See *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“[A] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”).

<sup>5</sup> *Madison v. Graham*, 316 F.3d 867, 869 (9th Cir. 2002) (A court, however, is “not bound to accept as true a legal conclusion couched as a factual allegation.”).

<sup>6</sup> *Cloes v. City of Mesquite*, 582 F. App’x. 721, 726 (9th Cir. 2014) (citing *Rockwell v. Sun Harbor Budget Suites*, 925 P.2d 1175, 1180 (Nev. 1996) (“Generally, whether an employee is acting within the scope of his or her employment is a question for the trier of fact, but where undisputed evidence exists concerning the employee’s status at the time of the tortious act, the issue may be resolved as a matter of law.”)).

1 when he allegedly “intentionally intruded upon Plaintiffs’ solitude and seclusion . . . for his  
 2 personal use.”<sup>7</sup> This fact demonstrates the Baehr’s alleged search of Plaintiffs’ phones was indeed  
 3 under the pretext of verifying insurance and did not serve a legitimate law enforcement purpose,  
 4 but instead was part of a “truly independent venture” wholly unrelated to and outside the scope of  
 5 his employment.<sup>8</sup> Plaintiffs’ Opposition cites to *Fleming v. Pickard*, 581 F.3d 922, 925 (9<sup>th</sup> Cir.  
 6 2009) in support of the bald contention that because Plaintiffs’ “Complaint explicitly alleges Baehr  
 7 acted ‘within the scope of this employment’ (ECF No. 1 at 2 ¶ 10), [it stated] a plausible claim that  
 8 that must be accepted as true under Rule 12(c).”<sup>9</sup> Other than restating the Rule 12(c)’s standard of  
 9 review for a motion for judgement on the pleadings, that all alleged facts must be accepted as true  
 10 and construed favorably to the non-moving party, *Fleming* is irrelevant to analysis of this case.

## 11 **2. As Alleged, Baehr’s Conduct Was Outside the Course of His Assigned** 12 **Task.**

13 Plaintiffs’ Complaint does not plead facts demonstrating Baehr was actively any  
 14 performing law enforcement duties. Rather, Plaintiffs’ Complaint (ECF No. 1) alleges that when  
 15 Baehr accessed and/or copied private materials from their phones, Baehr did so “for his personal  
 16 use” or “non-law enforcement purposes.”<sup>10</sup> Similarly, Plaintiffs citation to *Nat’l Convenience*  
 17 *Stores, Inc. v. Fantauzzi*, is incompatible to this case because in *Fantauzzi*, the court was evaluating  
 18 a motion for judgment notwithstanding the verdict, wherein a jury had already found the employer  
 19 vicariously liable.<sup>11</sup> *Fantauzzi*, is further distinguishable from this case because unlike the Stop N’  
 20 Go market employee, who was on his to convey a benefit to this employer – the measuring of  
 21 shelving – Plaintiffs here have not alleged Baehrs actions accrued any benefit to the City.<sup>12</sup> Rather

23 <sup>7</sup> Complaint (ECF No. 1 at 4 ¶ 25; 7 ¶¶ 41, 42).

24 <sup>8</sup> See NRS 41.745(1)(a); see also *Cloes*, 582 F. App’x. at 725-6.

25 <sup>9</sup> Opposition (ECF No. 31 at 8:6-9).

26 <sup>10</sup> Complaint (ECF No. 1 at 7 ¶ 42; 8 ¶ 48).

27 <sup>11</sup> See *Nat’l Convenience Stores, Inc. v. Fantauzzi*, 94 Nev. 655, 656, 584 P.2d 689, 690 (1978).

28 <sup>12</sup> Compare *Fantauzzi*, 94 Nev. 655, 659 (1978) (finding the employer liable where the employee temporarily abandoned his personal objective and turned to accomplish a task reasonably within the scope of his employment and of benefit to his master.) with *Cloes v. City of Mesquite*, 582 F. App’x. 721, 726 (9<sup>th</sup> Cir. 2014) discussing *J.C. Penny Co. v. Gravelle*, 62 Nev. 434, 155 P.2d 477, 481-82 (1945) (finding the employer immune from liability under NRS 41.745 even though the employee officer was on duty and in uniform because there was no evidence that his personal visit to deliver his wedding invitation was part of his job.).

1 Plaintiffs have described their traffic stops by Baehr as deceptive, pretextual, and made for non-  
 2 law enforcement purposes.<sup>13</sup> Coupled with Plaintiffs' acknowledgment that Baehr did not issue a  
 3 traffic citation it is apparent under the totality of circumstances that Baehr's actions were outside  
 4 the course of his assigned task.<sup>14</sup>

5 **3. As Alleged, Baehr's Conduct Not Only Failed to Advance A Legitimate**  
 6 **Law Enforcement Purpose But Was Contrary Thereto and Therefore**  
 7 **Unforeseeable.**

8 Plaintiffs' Opposition (ECF No. 31) attempts to backpaddle against the unforeseeably  
 9 strong current created by the narrowly channeled allegations of their Complaint (ECF No. 1).<sup>15</sup>  
 10 Plaintiffs argue that paragraphs 30 and 31 were misinterpreted because hypothetically "[t]he City  
 11 is perfectly capable of allowing employees to engage in conduct that is objectively unreasonable  
 12 but foreseeable."<sup>16</sup> And that the unproven allegation of the City's failure to train is somehow  
 13 sufficient to support the foreseeability of Baehr's allegedly "malicious" and "objectively  
 14 unreasonable" actions.<sup>17</sup> Plaintiffs' attempt to bolster their foreseeability argument by merging the  
 15 allegations of a two incident pattern from their failure to train *Monell* claim is flimsy. Plaintiffs'  
 16 Opposition seems to further acknowledge the unforeseeability of Baehr's alleged actions when  
 17 they request discovery to determine "whether the City could have anticipated Baehr's misuse of  
 18 his authority."<sup>18</sup>

19 Plaintiffs' citation to *Anderson v. Mandalay Corp.*, is similarly unconvincing. While the  
 20 decision in *Anderson* does state that the foreseeability test set forth NRS 41.745(1)(c) is "typically  
 21 factual, not legal," paragraphs 30 and 31 of the Plaintiffs' Complaint literally allege the polar  
 22 opposite of NRS 41.745(1)(c)'s foreseeability prong, thereby eliminating the need for a factual  
 23 inquiry.<sup>19</sup> The Court in *Anderson* stated "the Legislature clarified NRS 41.745(1)(c)'s reasonable  
 24 foreseeability standard, stating the "conduct of an employee is reasonably foreseeable if a person

25 <sup>13</sup> Complaint (ECF No. 1 at 4 ¶ 25, 5-6 ¶ 33, 8 ¶ 48).

26 <sup>14</sup> *Id.* at 4 ¶ 25.

27 <sup>15</sup> (ECF No. 31 at 9:23-1).

28 <sup>16</sup> *Id.* at 8:16-19.

<sup>17</sup> *Id.* at 10:3-6.

<sup>18</sup> *Id.* at 10:14-15.

<sup>19</sup> *Anderson v. Mandalay Corp.*, 131 Nev. 825, 829, 358 P.3d 242, 245 (2015).

1 of ordinary intelligence and prudence could have reasonably anticipated the conduct and the  
 2 probability of injury.”<sup>20</sup> Whereas paragraph 30 of Plaintiffs’ Complaint alleges “a prudent person  
 3 would not have concluded that there was any fair probability that inspection or copying of  
 4 Plaintiffs’ personal phone was necessary or legally justified.”<sup>21</sup> And paragraph 31 of Plaintiffs’  
 5 Complaint alleges “Baehr’s seizure and search of Plaintiffs’ phones . . . was objectively  
 6 unreasonable and without probable cause, as the phones and their contents had no relation to any  
 7 legitimate law enforcement purpose during routine traffic stops.”<sup>22</sup>

8 The City hired former officer Baehr to enforce the law, Plaintiffs alleged he used his  
 9 position to advance an wholly personal independent venture, which did not benefit the City, and  
 10 for which he is now facing federal criminal charges in Case No. 3:25-CR-00002-MMD-CSD.<sup>23</sup>  
 11 Even after assuming all the Complaint’s factual allegations as true and construing them in favor  
 12 of Plaintiffs, Baehr’s alleged actions cannot be presumed to have been foreseeable, and the City is  
 13 therefore entitled to immunity against Plaintiffs’ State law claims pursuant to NRS 41.745.<sup>24</sup>

#### 14 **C. Plaintiffs’ Argument Regarding NRS 41.0337 is Legally Incorrect.**

15 Plaintiffs repeatedly – at least six times – reference NRS 41.0337’s jurisdictional  
 16 requirement to name the political subdivision, in an attempt to resuscitate the undisputed factual  
 17 inadequacy of their complaint. Contrary to Plaintiffs’ contention, NRS 41.0337 presupposes  
 18 nothing.<sup>25</sup> Nor does NRS 41.0337 reinforce any of the legal conclusions against the City alleged  
 19 in Plaintiffs’ Complaint.<sup>26</sup> Plaintiffs also baseless assert that NRS 41.0337 implies that tort actions  
 20 “may be foreseeable when tied to official roles.”<sup>27</sup> Instead, the Nevada Court of Appeals’ decision  
 21

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22 <sup>20</sup> *Id.*

23 <sup>21</sup> (ECF No. 1 at 5 ¶ 30).

24 <sup>22</sup> *Id.* at 5 ¶ 31.

25 <sup>23</sup> The City requests that the Court take judicial notice of the publicly available docket in Case No. 3:25-CR-00002-MMD-CSD. *Turner v. Reno Police Dep’t*, No. 3:23-CV-00221-ART-CSD, 2025 WL 689004, at \*1 (D. Nev. Mar. 4, 2025) (citing *United States v. Ritchie*, 342 F.3d 903, 907–08 (9th Cir. 2003) (“A court may . . . consider certain materials—documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice—without converting the motion to dismiss into a motion for summary judgment.”)).

26 <sup>24</sup> See *Morgan v. Cnty. of Yolo*, 436 F. Supp. 2d 1152, 1154–55 (E.D. Cal. 2006), *aff’d*, 277 F. App’x 734 (9th Cir. 2008).

27 <sup>25</sup> (ECF No. 1 at 6 ¶ 35); (ECF No. 31 at 10:1-3).

28 <sup>26</sup> *Id.* at 9:9-10.

<sup>27</sup> *Id.* at 10 8-11

1 in *Craig v. Donnelly*, 135 Nev. 37, 439 P.3d 413 (2019) holds that NRS 41.0337 sets forth part of  
 2 the jurisdictional requirement that plaintiffs bringing state tort claims against a government  
 3 employee, must name the government entity in order to invoke Nevada’s waiver of sovereign  
 4 immunity.<sup>28</sup>

5 Plaintiffs are required to state plausible claims, with the benefit of the court accepting their  
 6 allegations as true and construing them in their favor; however, courts need not “accept as true a  
 7 legal conclusion couched as a factual allegation.”<sup>29</sup> Much like this Court need not accept Plaintiffs’  
 8 unsupported contention that the legislative intent of NRS 41.0337 somehow tips the foreseeability  
 9 scales against the City.

10 **D. Discovery is Not Required Because the City’s Motion For Judgment on the**  
 11 **Pleadings is Meritorious.**

12 Plaintiffs contend that immunity under NRS 41.745(1)(c) cannot be decided without  
 13 discovery and rely on citation to *Safeco Ins. Co. of Am. v. Rip Van 899, LLC*, No. 2:23-CV-01417-  
 14 ART-NJK, 2024 WL 3971134, at \*1 (D. Nev. Aug. 22, 2024) for support. *Safeco* involved a  
 15 motion for judgment on the pleadings filed by the issuer of a Landlord Insurance Policy contract.<sup>30</sup>  
 16 The Court granted *Safeco*’s motion in part and denied it in part because of the factually disputed  
 17 coverage terms of the underlying insurance contract.<sup>31</sup> *Safeco* is distinguishable because this case  
 18 simply requires review of the factual allegations contained in the Plaintiffs’ Complaint.

19 Discovery is unnecessary for Plaintiffs’ State law claims because the Plaintiffs’ Complaint  
 20 (ECF No. 1 at ¶¶ 23, 30, 31, 33, 45, 48) read together with the denials in the City’s Answer (ECF  
 21 No. 6 at 2 ¶ 4), undisputably demonstrate that that Baehr was acting within the scope of his  
 22 employment and the City is entitled to immunity as a matter of law due to the absence of any  
 23

24 <sup>28</sup> See *Craig v. Donnelly*, 135 Nev. 37, 39, 439 P.3d 413, 415 (Nev. App. 2019); (“NRS 41.0337 requires that, to  
 25 pursue a tort claim against a state employee, the complaint must name the State as a party pursuant to NRS 41.031.  
 26 Thus, NRS 41.031 and NRS 41.0337 require that, to pursue a claim against the State or a state employee acting within  
 27 the scope of his or her employment, a plaintiff must name the State of Nevada as a defendant.”); NRS 41.0337(1).

28 <sup>29</sup> *Papsan v. Allain*, 478 U.S. 265, 286 (1986); see also, *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754 (9th Cir.  
 1994) (legal conclusions cast in the form of factual allegations in the complaint are not entitled to an assumption of  
 truth).

<sup>30</sup> See *Safeco Ins. Co. of Am. v. Rip Van 899, LLC*, No. 2:23-CV-01417-ART-NJK, 2024 WL 3971134, at \*1 (D. Nev.  
 Aug. 22, 2024).

<sup>31</sup> See *id.*

1 potential factual dispute.<sup>32</sup> Dismissal of Plaintiffs’ State law claims is “completely compatible with  
 2 the fundamental judicial maxim that federal jurisdiction is limited to a justiciable case or  
 3 controversy.”<sup>33</sup>

4 **E. Plaintiffs’ Allegations that The City Failed to Adequately Train Baehr Are**  
 5 **Factually Insufficient To State a Plausible *Monell* Claim.**

6 Plaintiffs rely upon the Ninth Circuit’s ruling in *Richards v. County of San Bernadino*, that  
 7 *Monell* liability does not require a predicate constitutional violation by a government official, to  
 8 validate their vague pleaded failure to train allegations against the City.<sup>34</sup> Plaintiffs do not include  
 9 the City as a named defendant in their First Cause of Action, alleging a violation of the Fourth  
 10 Amendment under Section 1983, and instead only plead a conclusory Section 1983 *Monell* claim  
 11 against the City.<sup>35</sup> And as discussed *supra* the City is immune from the State law causes of action  
 12 Plaintiffs plead against it. Nevertheless, *Richards* does not aid the Plaintiffs’ cause because unlike  
 13 the Plaintiffs’ Complaint (ECF No. 1), the plaintiff there in *Richards* identified two specific  
 14 policies of the San Bernardino Police Sheriff’s Department which may have the plaintiff could  
 15 have shown caused him constitutional injury.<sup>36</sup>

16 **1. Deliberate Indifference – Lack of Omission**

17 “Deliberate indifference is a stringent standard of fault, requiring proof that a municipal  
 18 actor disregarded a *known or obvious* consequence of his action.”<sup>37</sup> The United States District  
 19 Court for the Southern District of California’s ruling in *Doe by & through Tanis v. Cnty. of San*  
 20 *Diego*, 576 F. Supp. 3d 721, 738 (S.D. Cal. 2021) involved a similar factual scenario to that alleged  
 21 by Plaintiffs. In the *Doe by & through Tanis* case, the plaintiff alleged, a variety of *Monell* claims  
 22 against San Diego County regarding its policies for employee training, discipline, and supervision

23  
 24 <sup>32</sup> *Morgan v. Cnty. of Yolo*, 436 F. Supp. 2d 1152, 1155 (E.D. Cal. 2006), *aff’d*, 277 F. App’x 734 (9th Cir. 2008) (“A  
 25 Rule 12(c) Motion for Judgment on the Pleadings may consequently be granted if, after assessing both the complaint,  
 plus matters for which judicial notice is proper, it appears “beyond doubt that the [non-moving party] cannot prove  
 any facts that would support his claim for relief ...”).

26 <sup>33</sup> *Id.* at 1156; *Friends of the Earth v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 180–81 (2000).

27 <sup>34</sup> (ECF No. 31 at 13:16-19).

<sup>35</sup> See (ECF No. 1 at 5-6).

<sup>36</sup> See *Richards v. Cnty. of San Bernardino*, 39 F.4th 562, 574 (9th Cir. 2022).

28 <sup>37</sup> *Doe by & through Tanis v. Cnty. of San Diego*, 576 F. Supp. 3d 721, 738 (S.D. Cal. 2021) *citing* *Christie v. Iopa*,  
 176 F.3d 1231, 1240 (9th Cir. 1999) (emphasis in original) (internal quotations omitted).



1 regarding use of its NetRMS system.<sup>38</sup> Essentially, the plaintiff alleged that the county’s failure to  
 2 adequately train its employees on use of its NetRMS system resulted in its corrections officer,  
 3 Wilson, improperly accessing the plaintiff’s personal information.<sup>39</sup> The plaintiff’s personal  
 4 information was contained in and accessed through the NetRMS investigation file about Wilson’s  
 5 previous sexual assault of the plaintiff for which he was later convicted.<sup>40</sup> The Court granted San  
 6 Diego’s motion for summary judgment with respect to the *Monell* claims.<sup>41</sup> The *Doe by & through*  
 7 *Tanis* Court determined that the plaintiff had failed to demonstrate a pattern of similar  
 8 constitutional violations by untrained employees, “which is ordinarily necessary to demonstrate  
 9 deliberate indifference for purposes of failure to train.”<sup>42</sup> And therefore, that the Court was left to  
 10 speculate that similar incidents *may* have occurred.<sup>43</sup> The Court explained that:

11 Under Ninth Circuit precedent, “[a] policy of inaction or omission  
 12 may be based on failure to implement procedural safeguards to  
 13 prevent constitutional violations.” In an “omission” action, a  
 14 plaintiff must show the municipality’s policy of inaction “amounts  
 15 to deliberate indifference to the plaintiff’s constitutional right, and  
 16 that the policy caused the violation, in the sense that the  
 [municipality] could have prevented the violation with an  
 appropriate policy.”<sup>44</sup>

17 As identified by the City in its Motion for Judgment on the Pleadings (ECF No. 16 at 14:3-  
 18 7), Plaintiffs have neither identified how the City was on “actual or constructive notice” of the risk  
 19 that Defendant Baehr or any of its other officers had violated or were in jeopardy of violating the  
 20 Fourth Amendment rights of citizens through cell phone seizures and/or searches for personal use,  
 21 stemming from routine traffic stops.<sup>45</sup> Instead, the Plaintiffs’ Complaint (ECF No. 1 at 9 ¶ 50) and  
 22

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23 <sup>38</sup> See *Doe by & through Tanis*, 576 F.Supp.3d at 727-31.

24 <sup>39</sup> See *id.*

25 <sup>40</sup> See *id.*

26 <sup>41</sup> See *id.* at 741.

27 <sup>42</sup> See *id.* at 739.

28 <sup>43</sup> See *id.*

<sup>44</sup> *Id.* at 737-8 (citing *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1143 (9th Cir. 2012) (citing *Oviatt v. Pearce*, 954 F.2d 1470, 1477 (9th Cir. 1992)).

<sup>45</sup> See *Doe by & through Tanis*, 576 F.Supp.3d at 738 (“Plaintiff must demonstrate that the [City] ‘was on actual or constructive notice that its omission would likely result in a constitutional violation.’”) (citing *Tsao*, 698 F.3d at 1145)).



1 Opposition (ECF No. 31 at 13 § 2) allude to topics which they assume are inadequately addressed  
 2 by the City’s training policies. Not only do Plaintiffs’ postulations temporally fail to place the City  
 3 on notice of a risk of constitutional violations, but Plaintiffs also fail to identify specific City  
 4 policies connected to a pattern of similar violations.<sup>46</sup>

## 5 **2. Failure to Adequately Train – Single Incident**

6 “A municipality’s culpability for a deprivation of rights is at its most tenuous where a claim  
 7 turns on a failure to train.”<sup>47</sup> This is particularly true where, as here, the Plaintiffs’ have alleged a  
 8 single officer’s conduct was so egregious and that the need for training was “so obvious” that the  
 9 City’s failure to act reflects a conscious choice.<sup>48</sup> Faced with such instances, the Ninth Circuit has  
 10 noted, “when a municipal employee commits a constitutional tort, it could always be alleged that  
 11 the municipality failed to enact a policy that could have prevented the tort.”<sup>49</sup>

12 Similar the Court’s holding in *Doe by and through Tanis*, the instant Plaintiffs’ failure-to-  
 13 train theory suffers the same deficiency as its “omission” theory, that being the absence of  
 14 allegations or evidence that the City “failed to investigate and discipline employees in the face of  
 15 widespread constitutional violations.”<sup>50</sup> Plaintiffs in this case allege that Baehr’s actions were  
 16 “dishonest, intentional, wanton, malicious, and oppressive[,]” but Plaintiffs do not and cannot  
 17 identify any basis upon which the City could have or should have been aware or of Baehr’s  
 18 actions.<sup>51</sup> The reason being is that Baehr’s alleged actions were neither a predictable nor obvious  
 19 consequence of the City’s training policies or inaction regarding the same.<sup>52</sup> Supreme Court Justice  
 20 Brennan explained this unfortunate reality well in his concurring opinion in the *Okla. City v. Tuttle*,  
 21 471 U.S. 808, 830 (1985). Justice Brennan stated:

22  
 23 <sup>46</sup> *Doe by & through Tanis*, 576 F.Supp.3d at 738-9 (citing *Estate of Davis v. City of N. Richland Hills*, 406 F.3d  
 24 375, 383 (5th Cir. 2005) (“[N]otice of a pattern of *similar* violations is required.”)).

<sup>47</sup> *Doe by & through Tanis*, 576 F.Supp.3d at 739 (citing *Connick v. Thompson*, 563 U.S. 5, 61 (2011)).

25 <sup>48</sup> *See Doe by & through Tanis*, 576 F.Supp.3d at 739 (citing *Connick*, 563 at 71-72 (“Single-incident liability occurs  
 26 only in a narrow range of circumstances”)).

<sup>49</sup> *Tsao*, 698 F.3d at 1143-44.

27 <sup>50</sup> *Doe by & through Tanis*, 576 F.Supp.3d at 740; *see also Hunter v. Cty. of Sacramento*, 652 F.3d 1225, 1233 (9th  
 28 Cir. 2011) (“We have long recognized that a custom or practice can be inferred from widespread practices or  
 ‘evidence of repeated constitutional violations for which the errant municipal officers were not discharged or  
 reprimanded.’”) (internal quotation marks omitted).

<sup>51</sup> *Id.* at 739.

<sup>52</sup> *Id.*

1 A single police officer may grossly, outrageously, and recklessly  
 2 misbehave in the course of a single incident. Such misbehavior may  
 3 in a given case be fairly attributable to various municipal policies or  
 4 customs, either those that authorized the police officer so to act or  
 5 those that did not authorize but nonetheless were the “moving  
 6 force,” *Polk County v. Dodson*, 454 U.S. 312, 326, 102 S.Ct. 445,  
 7 454, 70 L.Ed.2d 509 (1981), or cause of the violation. In such a case,  
 8 the city would be at fault for the constitutional violation. Yet it is  
 9 equally likely that the misbehavior was attributable to numerous  
 10 other factors for which the city may not be responsible; the police  
 11 officer's own unbalanced mental state is the most obvious example.  
 12 Cf. *Brandon v. Holt*, 469 U.S. 464, 466, 105 S.Ct. 873, —, 83  
 13 L.Ed.2d 878 (1985). In such a case, the city itself may well not bear  
 14 any part of the fault for the incident; there may have been nothing  
 15 that the city could have done to avoid it. Thus, without some  
 16 evidence of municipal policy or custom independent of the police  
 17 officer's misconduct, there is no way of knowing whether the city is  
 18 at fault. To infer the existence of a city policy from the isolated  
 19 misconduct of a single, low-level officer, and then to hold the city  
 20 liable on the basis of that policy, would amount to permitting  
 21 precisely the theory of strict *respondeat superior* liability rejected in  
 22 *Monell*.<sup>53</sup>

### 17 **3. Plaintiffs’ Allege Baehr’s Personal Motivations Were the Moving** 18 **Force, Not the City’s Polices or Lack Thereof.**

19 Plaintiffs’ Opposition (ECF No. 31 at 16:10-14) next erroneously contends that the Court’s  
 20 ruling in *City of Canton, Ohio v. Harris*, supports the proposition that “intentional misconduct can  
 21 stem from inadequate training if the City’s failure to establish clear protocols enables officers to  
 22 exploit their authority.” Plaintiffs’ argument misstates the Court’s “moving force” concept.  
 23 Contrary to Plaintiffs’ contention, the Court in *City of Canton* held that “the respondent must still  
 24 prove that the deficiency in the training actually caused the police officer’s indifference” and “that  
 25 to adopt lesser standards of fault and causation would open municipalities to unprecedented  
 26 liability under § 1983.”<sup>54</sup> Recognizing that Plaintiffs’ own pleadings cast Baehr’s actions as

27  
 28 <sup>53</sup> *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 830–31 (1985) (Justice Brennan concurring).

<sup>54</sup> *City of Canton, Ohio v. Harris*, 489 U.S. 378, 391 (1989).

unforeseeable, wholly motivated by his own personal predilections, and unrelated to the advancement of legitimate law enforcement objectives, Plaintiffs now request the Court to ignore the *Monell*'s precedential progeny and impose strict liability upon the City. The City respectfully requests this Court grant its motion for judgment on the pleadings regarding Plaintiffs' *Monell* claim and avoid the "endless exercise of second-guessing municipal employee-training programs" that the United States Supreme Court has cautioned against.<sup>55</sup>

**F. Amending the Complaint Would be Futile.**

"Plaintiff's complaint may be dismissed only when defendant's plausible alternative explanation is so convincing that plaintiff's explanation is *im* plausible."<sup>56</sup> As acknowledged by the Plaintiffs, the purpose of Rule 12(c) motions are to save the parties considerable time and needless expense when no factual disputes exist.<sup>57</sup> Arguendo Plaintiffs are granted leave to amend and through discovery obtain further evidence of Baehr's alleged misconduct, said evidence will only further substantiate the disconnect between the City's training policies, its reasonable expectations for the scope of Baehr's employment and the misdeeds Plaintiffs have alleged he committed. of the parties will not change. As such, leave to amend should be denied because amendment of Plaintiffs' Complaint to allege facts consistent with it cannot cure the pleading's deficiencies.<sup>58</sup> Plaintiffs' allegations against the City fail as a matter of law, additional facts will not alter this case.

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<sup>55</sup> *Id.* at 392.

<sup>56</sup> *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

<sup>57</sup> (ECF No. 31 at 19:15-18).

<sup>58</sup> *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992).

1 **II. CONCLUSION**

2 As Plaintiffs cannot amend their Complaint to “state a claim upon which relief can be  
3 granted” against the City, all of Plaintiffs’ causes of action against the City must be dismissed  
4 without leave to amend. Accordingly, the City respectfully requests that this Court grant the City  
5 judgment on the pleadings under FRCP 12(c) and dismiss all of Plaintiffs’ causes of action against  
6 the City.

7 DATED this 21st day of May 2025.

8 KARL S. HALL  
9 Reno City Attorney

10 By: /s/ Peter Keegan  
11 PETER K. KEEGAN  
12 Deputy City Attorney  
13 Nevada State Bar No. 12237  
14 Post Office Box 1900  
15 Reno, Nevada 89505  
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**CERTIFICATE OF SERVICE**

Pursuant to FRCP 5(b), I certify that I am an employee of the RENO CITY ATTORNEY'S OFFICE, and that on this day, I served a copy of on the foregoing *CITY OF RENO'S REPLY IN SUPPORT OF ITS MOTION FOR JUDGMENT ON THE PLEADINGS* on the party(s) set forth below by:

  X   CMECF electronic service.

Electronically addressed as follows:

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Attorney for Plaintiffs

  X   Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices, and addressed as follows:

Tyler Michael Baehr  
9752 Pachuca Drive  
Reno, NV 89521  
In Propria Persona

DATED this 21st day of May 2025.

/s/ Peter Keegan  
Peter Keegan  
Deputy City Attorney